

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11276 of 2023

Appellant :- Bobby

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ashish Goyal

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

List revised.

Learned A.G.A. submits that notice upon the informant/opposite party no.2 has been duly served but no one has put in appearance on her behalf.

Heard learned counsel for the appellant, learned Additional Government Advocate for the State of U.P. and perused the record.

This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the bail rejection order dated 12.10.2023 passed by learned Special Judge SC/ST Act, Agra in Bail Application No. 7013 of 2023, arising out of Case Crime No. 188 of 2023, under Sections 323, 324, 504, 506, 307 IPC and 3 (1) (Da), 3 (1) (Dha), 3 (2) (V) of SC/ST Act, Police Station Saiyan, District Agra.

There is allegation against the appellant in the F.I.R. that on 29.08.2023 at around 5 pm, appellant assaulted the husband of the informant with a sword as a result of which he sustained grievous injuries. Appellant has also addressed her husband by abusing and addressing with caste related words.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. It is further submitted that as per the allegation of F.I.R., appellant assaulted the husband of the informant by sword while complainant during her statement recorded under Section 161 Cr.P.C. stated that appellant assaulted her husband by *Katari*. It is further submitted that injured has been medically examined and as per medical report all the injuries sustained by the injured were found to be simple in nature. It is further submitted that no obvious injury was seen during X-ray of the injured. The appellant does not

have any criminal history to his credit. Lastly, it is submitted by learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant is languishing in jail since 07.09.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the early disposal of the case.

Per contra, learned A.G.A. opposed the prayer for bail by contending that as per the opinion of the doctor the injury sustained by the injured on his neck was fatal. However, he could not dispute the aforesaid factual aspects of the matter.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, this Court is of the view that the appellant has made out a case for bail. The Court below erred in rejecting the bail application. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

Accordingly, the appeal is **allowed** and the impugned order rejecting the bail application of the appellant is set-aside.

Let the appellant, namely, **Boby** involved in the above Case be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

- (i) The appellant will not tamper with the evidence during the trial.
- (ii) The appellant will not pressurize/intimidate the prosecution witness.
- (iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.
- (iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- (v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to

the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 7.12.2023/AKT